

PROPOSED DRAFT

NOTICE OF PUBLIC HEARING TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

**NO. R3-2008-0037
ISSUED TO**

Bardex Corporation

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL COAST REGION, ON OCTOBER 16-17, 2008**

Background

The Assistant Executive Officer of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13268 (CWC) against Bardex Corporation (Discharger) alleging that it has violated CWC Section 13267 by failing to comply with provisions of Central Coast Water Board Cleanup and Abatement Order No. R3-2004-0063, a Water Code Section 13267 Order dated October 31, 2007, and Cleanup and Abatement Order No. R3-2007-0087. The Complaint proposes that administrative civil liability in the amount of \$25,000 be imposed as authorized by CWC Section 13268. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the Central Coast Water Board during its meeting of October 16-17, 2008, in Santa Barbara.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Central Coast Water Board will consider whether to adopt, modify, or reject the proposed assessment, or whether to refer the matter to the Attorney General's Office to seek recovery of judicial civil liability. If it adopts an assessment, the Central Coast Water Board will issue an Administrative Civil Liability Order.

The public hearing on October 16-17, 2008, will commence as announced in our Central Coast Water Board meeting agenda. The meeting will be held at the Santa Barbara County Supervisors Board Hearing Room, 105 East Anapamu St. - 4th Floor, in Santa Barbara. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Central Coast Water Board's web page at:

www.waterboards.ca.gov/centralcoast.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Central Coast Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Central Coast Water Board. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Coast Water Board, staff or others, at the discretion of the Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Central Coast Water Board Prosecution Staff
- (2) Bardex Corporation

Contacts

Advisory Staff:

Frances McChesney, Esq.
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
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Executive Officer
Regional Water Quality Control Board, Central Coast Region
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Sheila Soderberg
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Thea Tryon
Land Disposal/Perchlorate Unit Supervisor
Regional Water Quality Control Board, Central Coast Region
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John Robertson
Groundwater Protection Section Manager
Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Discharger:

Mr. James L. Bartlett, Jr.
Bardex Corporation
6338 Lindmar Drive
Goleta, CA 93117

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Coast Water Board (Prosecution Staff) have been separated from those who will provide advice to the Water Board (Advisory Staff). Members of the Advisory Staff are: Frances McChesney, Senior Staff Counsel, and Roger Briggs, Executive Officer. Members of the Prosecution Staff are: Christian Carrigan, Senior Staff Counsel, Michael Thomas, Assistant Executive Officer, Todd Stanley, Enforcement Unit, Harvey Packard, Pollution Prevention Section Manager, Katie DiSimone, Site Cleanup/DoD Unit, Thea Tryon, Land Disposal/Perchlorate Unit Supervisor, Sheila Soderberg, Site Cleanup/DoD Unit Supervisor, and John Robertson, Groundwater Protection Section Manager. This Notice has been issued by the Advisory Staff based on a draft proposed by the Prosecution Staff.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Central Coast Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Central Coast Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already listed above, shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on **August 18, 2008**, to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Central Coast Water Board affect the person) and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **August 25, 2008**. The parties will be notified by 5 p.m. on **September 2, 2008**, as to whether the request has been granted or denied.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 30 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

Written Evidence, Exhibits and Policy Statements

Designated parties shall submit in writing 18 copies of the following information to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812 no later than 5 p.m. on **September 26, 2008**.

1. All documentary evidence and exhibits proposed to be offered at the hearing.
2. All legal and technical arguments or analysis.

In addition to the foregoing, each designated party shall send (1) one copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on **September 26, 2008**.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

Evidentiary Objections

A designated party objecting to evidence proposed by another party must submit a written objection by 5 p.m. on **October 3, 2008**, to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, with a copy to all other designated parties. The Advisory Staff will notify the parties about further action to be taken on such objections.

Questions

Questions concerning this proceeding may be addressed to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812.

IMPORTANT DEADLINES

July 21, 2008	ACL Complaint issued to Discharger by Prosecution Team; Prosecution Team Sends draft Hearing Notice to Discharger and Advisory Team.
August 4, 2008	Comments due on draft Hearing Notice
August 11, 2008	Advisory Team issues final Hearing Notice
August 18, 2008	Deadline for submission of request for designated party status.
August 25, 2008	Deadline for opposition to request for designated party status.
September 2, 2008	Decision issued on request for designated party status, if any.
September 26, 2008	Deadline for submission of evidence and legal argument.
October 3, 2008	Deadline for submission of evidentiary objections.

October 10, 2008

Rulings on evidentiary objections, if any.

October 16-17, 2008

Hearing Date

Roger Briggs
Executive Officer

DATE